

NATIONAL UNION OF EMPLOYEES IN COMPANIES
MANUFACTURING RUBBER PRODUCTS

v.

DIRECTOR-GENERAL FOR INDUSTRIAL RELATIONS & ANOR.

HIGH COURT MALAYA, PULAU PINANG

WAN ADNAN J

[ORIGINATING SUMMONS NO. 24-820-89]

3 APRIL 1990

LABOUR LAW: *Recognition of trade unions - Section 9(2) of the Industrial Relations Act 1967 - Definition of “resolve” in s. 9(4A) of the Act. Effect of withdrawing application for recognition after the director-general had taken steps - Whether s. 12 of the Act applied.*

The plaintiffs served a claim for recognition dated 1 April 1988 on the second defendant. The second defendant referred the matter to the first defendant for clarification. Subsequently the plaintiff, pursuant to s. 9(4) of the Act reported the matter to the first defendant who then pursuant to s. 9(4A) started to make enquiries to resolve the matter. Then by letter dated 18 May 1989 the plaintiffs withdrew their claim for recognition.

On 5 June 1989 the plaintiffs served a new claim for recognition on the second defendant with a copy to the first defendant. They were told their claim could not be entertained by reason of s. 12 of the Act.

The question was whether the plaintiffs claim for recognition dated 1 April 1988 had been resolved under s. 9(4A) of the Act.

Held:

[1] The word ‘resolve’ in s. 9(4A) of the Industrial Relations Act 1967 means that a matter becomes resolved when the obligation of the director-general to resolve has been brought to an end.

[2] Under subsection (4A) of the Act the director-general takes the necessary steps and makes enquiries to resolve the matter. But he cannot decide whether or not to accord recognition. If the matter is not resolved, the director-general has to refer it to the Minister for decision.

[3] Where a union withdraws its application for recognition after the director-general had started to take steps and make enquiries pursuant to subsection (4A) the matter of the application for recognition must be considered to have been resolved and accordingly s. 12 of the Act applied.

[Application dismissed with costs.]

Cases referred to:

Stephens v. Cuckfield Rural District Council [1960] 2 All ER 716

Herron v. Rathmines and Rathgar Improvement Commissioners [1892] AC 498

Legislation referred to:

Industrial Relations Act 1967, ss. 9, (2), (3), (3)(a), (4), (4A), (4B), (5), 12

For the applicant/plaintiffs - N. Shanmugam; M/s. Shan & Gooi

For the 1st respondent/defendant - Soo Ai Lin (Senior Federal Counsel)

For the 2nd respondent/defendant - S. Kulasegaran; M/s. Ranjit, Thomas & Kula

*a***JUDGMENT****Wan Adnan J:**

The plaintiffs' application is for

b

(a) a declaration that the first defendant's rejection by their letter dated 12 June 1989 of the plaintiffs' claim for recognition under s. 9 of the Industrial Relations Act 1967 in respect of the workmen employed by the second defendants was wrong and incorrect and based on a misinterpretation of s. 12 of the Industrial Relations Act 1967;

c

(b) a declaration that the second defendants' refusal to accord recognition by their letter dated 9 June 1989 on the ground that s. 12 of the Industrial Relations Act 1967 applies was also wrong and incorrect and based on a misinterpretation of the said section;

(c) such further or other consequential orders or directions as may be appropriate and proper;

(d) costs.

d

By letter dated 1 April 1988 the plaintiffs served a claim for recognition on the second defendant under s. 9(2) of the Industrial Relations Act 1967 (the Act). The second defendant referred the matter to the first defendant for clarification. Subsequently the plaintiffs pursuant to s. 9(4) of the Act reported the matter to the first defendant who then pursuant to s. 9(4A) started to make enquiries to resolve the matter. Then by letter dated 18 May 1989 the plaintiffs withdrew their claim for recognition.

e

On 5 June 1989 the plaintiffs served a new claim for recognition on the second defendant with a copy to the first defendant. They were told their claim could not be entertained by reason of s. 12 of the Act which provides as follows:

12. Trade unions not accorded recognition

f

Where a claim for recognition under s. 9(2) is resolved under s. 9(4A), or where a decision thereon has been made by the Minister under s. 9(5), resulting in the trade union of workmen concerned not being accorded recorded recognition, such trade union shall not make any further claim for recognition until six months have elapsed from the date of such resolution or decision.

Hence this application.

g

The question is simply whether the plaintiffs' claim for recognition dated 1 April 1988 has been resolved under s. 9(4A). It is the contention of the Counsel for the plaintiffs that the claim had not been resolved by the first defendant under s. 9(4A). The withdrawal of the claim is not tantamount to the claim being resolved.

First, what is the function of the director general when a claim for recognition is made?

h

Under s. 9(2) a trade union of workmen may serve on an employer a claim for recognition. Under s. 9(3) the employer has twenty-one days after the service of the claim within which it must either

(a) accord recognition

(b) refuse to accord recognition or

i

(c) apply to the director-general to ascertain whether the workmen in respect of whom recognition is being sought are members of the trade union of workmen concerned.

If the employer does not accord recognition or if it fails to comply with subsection (3) the trade union of workmen may report the matter in writing to the director-general who then under subsection (4A) “may take such steps or make such enquiries as he may consider necessary or expedient to resolve the matter.” Towards resolving the matter the director-general is given the powers provided in subsection (4B). Where the matter is not resolved under sub-section (4A) the director-general must notify the Minister who then pursuant to subsection (5) shall give his decision on the matter.

The obligation of the director-general to resolve the matter arises only upon receipt by him of either an application under sub-section (3)(c) or a report under subsection (4). Under subsection (4A) the director-general then takes the necessary steps and makes necessary enquiries to resolve the matter. How does he “resolve” the matter when subsection (4C) provides “Where the matter is not resolved under subsection (4A) the director general shall notify the Minister” and subsection (5) provides for the Minister to make the decision. In my view the director-general is not supposed to make a decision on the matter. He cannot decide whether or not to accord recognition. The power to accord recognition is only given to the employer under s. 9(3)(a) or the Minister under s. 9(5). The most the director general can do to resolve the matter under subsection (4A) is (after exercising his powers under subsection (4B) is to advice the employer to accord recognition. If the advice is accepted and recognition is accorded the matter is resolved under subsection (4A). Otherwise the matter is not resolved and has to be referred to the Minister for his decision.

Now I come back to this application.

The act does not define the word “resolve”. Webster’s New World Dictionary gives the meaning as “to make a decision about” or “to come to a decision” while Chambers’ Twentieth Century Dictionary gives the meaning as “to solve, to dissipate, to free from doubt or difficulty” and the Universal Dictionary of English Language “to become void, to lapse”. In the context of s. 9 of the Act I prefer to take “to become void, to lapse” as the meaning of the word “resolve” in s. 9(4A) of the Act. A matter becomes resolved when the obligation of the director-general to resolve has been brought to an end.

As I said earlier, the obligation of the director-general to resolve arises only upon receipt by him of either an application under subsection (3)(c) or a report under subsection (4). Therefore if a trade union withdraws its claim for recognition before the matter has become a matter for the director-general to resolve, the matter cannot be said to have been resolved by the director-general under subsection (4A) and therefore s. 12 of the Act does not apply. But if the union withdraws its application for recognition after the director general has started to take steps and make enquiries pursuant to subsection (4A) the matter of the application for recognition must be considered to have been resolved and accordingly s. 12 of the Act applies. In this case the trade union withdrew its application after the director general had taken steps and made enquiries towards resolving the application. Section 12 of the Act therefore applied.

Counsel for the plaintiffs also contends that for s. 12 of the Act to apply there must have been a decision not to accord recognition. He relies firstly on the marginal note to s. 12 which says “trade unions not accorded recognition” and secondly to the explanatory statement to the Bill of Parliament to amend s. 12 of the Industrial Relations Act which says “clause 4 seeks to amend s. 12 of the Act to extend the waiting period from three months to six months before a trade union would be allowed to submit a fresh claim for recognition after an *earlier claim for recognition has been rejected*.” (Emphasis is added)

a I was referred to the case of *Stephens v. Cuckfield Rural District Council* [1960] 2 All ER 716 where it was said:

While the marginal note to a section cannot control the language used in the section, it is at least permissible to approach a consideration of its general purpose and the mischief at which it is aimed with the note in mind.

b Reading s. 12 of the Act I find there is no ambiguity at all. There is no need to use the marginal note as an aid to the construction of the section. The section is very clear. The section applies not only to a claim where recognition is not accorded but also to a claim which has been resolved under s. 9(4A). Similarly with regard to the explanatory statement. There is no ambiguity in the section. "Even when words in a statute are ambiguous so that they may be construed in more than one sense regard may not be had to the bill by which it was introduced." *Herron v. Rathmines and Rathgar Improvement Commissioners* [1892] AC 498 at 501.

c

The application dismissed with costs.

Also found at [1990] 1 CLJ 1173

d

e

f

g

h

i